

**STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION**

REPORT NO 15 of 1991

17 September 1991

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Mrs E Grassby, MLA (Presiding Member)
Mr B. Collaery, MLA
Mr B Stefaniak, MLA

Secretary: Mr T Duncan
Legal Advisor: Emeritus Professor D Whalan

TERMS OF REFERENCE

- (1) a Standing Committee for scrutiny of bills and subordinate legislation shall be appointed;
- (2) the Committee shall with respect to any instrument of a legislative nature (including a regulation, rule or by-law) made under an Act consider whether the instrument –
 - (a) is in accord with the general objects of the Act under which it is made;
 - (b) unduly trespasses on rights previously established by law;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; and
 - (d) contains matter which in the opinion of the committee should properly be dealt with in an Act of the Legislative Assembly;
- (3) the Committee shall with respect to the clauses of bills introduced into the Legislative Assembly consider whether such bills –
 - (a) unduly trespass on personal rights and liberties;
 - (b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) inappropriately delegate legislative powers; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
- (4) the Committee shall consist of three members;
- (5) if the Assembly is not sitting when the Committee is ready to report on Bills and subordinate legislation, the Committee may send its report to the Speaker. or. in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing and circulation;
- (6) the majority of members constitutes a quorum of the Committee;
- (7) the Committee be provided with the necessary additional staff, facilities and resources; and
- (8) the foregoing provisions of the resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

SUBORDINATE LEGISLATION

(1) No Comment Offered

The Committee has examined the following subordinate legislation and offers no comment.

ACT Regulations 1991 No. 18 being Landlord and Tenant Regulations prescribe a period of 30 days during which bond money must be deposited where a lessor is represented by a real estate agent.

ACT Determination No. 77 of 1991 made under section 77 of the Radiation Act 1983 cancels the existing Determination of fees for licence and registration fees under the Act and sets new fees.

ACT Determination No. 78 of 1991 made under section 12 of the Housing Assistance Act 1987 creates a Crisis Accommodation Housing Assistance Program.

Exemption No. 79 of 1991 made under sections 10(3) and 12(4) of the Tobacco Act 1927 exempts contracts and agreements between the Australian Cricket Board Incorporated and The Benson and Hedges Company relating to the display on 17 December 1991 of perimeter and scoreboard advertising at Manuka Oval during the conduct of a cricket match between the Prime Minister's XI and India from the operation of sections 10(1), 12(1) and 12(2) of the Tobacco Act 1927.

Exemption No. 80 of 1991 made under sections 10(3) and 12(4) of the Tobacco Act 1927 exempts contracts and agreements between the Australian Cricket Board Incorporated and The Benson and Hedges Company relating to the display on 11 March 1992 of perimeter and scoreboard advertising at Manuka Oval during the conduct of a cricket match between England and Zimbabwe from the operation of sections 10(1), 12(1) and 12(2) of the Tobacco Act 1927.

ACT Determination No. 81 of 1991 made under sections 163C and 217A of the Motor Traffic Act 1936 specifies and determines the parking fees that are payable in a carpark at Phillip.

(2) Comment offered

The Committee has examined the following legislation and offers the following comments.

Declaration made under section 17 of the Nature Conservation Act 1980 declares a number of fish and invertebrates to be protected, a number of animals to be exempt and a number to be restricted animal wildlife.

Declaration made under section 16 of the Nature Conservation Act 1980 declares many species of wildlife to have special protection status.

(a) No Explanatory Statement or Numbering

Neither of these Declarations appears to have an Explanatory Statement; nor is either numbered.

ACT Regulations 1991 No. 19 being Co-operative Societies Regulations (Amendment) prescribe the accounting requirements and the accounting standards that are to be applied in relation to a co-operative society's accounts consequential upon the more comprehensive accounting and reporting requirements that are required to be complied with following the passing of the Co-operative Societies (Amendment) Act 1991.

(b) A Possible Puzzle about Commencement

The Co-operative Societies (Amendment) Act 1991 did not contain a special commencement clause so, applying s. 25 of the Australian Capital Territory (Self-Government) Act 1988, it commenced on the date of its notification in the Gazette, which was 26 August 1991.

The Explanatory Statement accompanying the Co-operative Societies Regulations (Amendment) states that

"Regulation 1 provides that the Amending Regulations will commence operation on the same day the Co-operative Societies (Amendment) Act 1991 commences."

In fact, there appears to be only one Regulation in the Amending Regulations and it deals with the substantive changes. There does not appear to be any mention of a commencement day in the Amending Regulations. Thus, in accordance with s. 6(1) of the Subordinate Laws Act 1989, the Amending Regulations will have commenced on the date of their notification in the Gazette, which was 10 September 1991.

Has Regulation 1 referred to in the Explanatory Statement been omitted accidentally? If it had been inserted in the form suggested in the Explanatory Statement, it would have made the provisions of the Amending Regulations operate retrospectively to 26 August 1991 to when the Co-operative Societies (Amendment) Act 1991 came into operation. If the proposed Regulation 1 has been omitted deliberately, are there any problems with the gap between the coming into force of the Act on 26 August 1991 and the coming into force of the Amending Regulations on 10 September 1991?

(c) New Explanatory Statements Received

In its Report No. 12 of 1991 the Committee drew attention to the fact that certain Explanatory Statements for Determinations of fees appeared to be incomplete.

A revised Explanatory Statement for ACT Determination of Fees No. 33 of 1991 made under section 18A of the Lotteries Act 1964 has now been received. It now helpfully lists all the fees that have been fixed and lists the old and new fees alongside one another.

Revised Explanatory Statements have also been received for ACT Determination of Fees No. 26 of 1991 made under section 37B of the City Area Leases Act 1936 and ACT Determination of Fees No 51 of 1991 made under section 116 of the Unit Titles Act 1970. They state that the "fees have been increased by 4.1% (rounded to an appropriate amount) in accordance with Cabinet directions". This is also helpful, but it would have been even more helpful to Members of the Legislative Assembly if the old and new fees had been listed alongside one another as is becoming customary. Perhaps thought could be given to doing this for the next Determinations that are made in the area.

(d) Letters of Explanation Received

In Report No. 12 of 1991 the Committee reported on ACT Determination No. 67 of 1991 made under section 4 of the Public Place Names Act 1989. This Determination, among other things, corrected a number of comments about names to which errors the Committee had drawn attention in its Report No. 5 of 1991. In Report No. 12 the Committee mentioned that it did not appear to have received an explanation as it had on an earlier occasion when errors had been made in place names.

The Committee has now received a copy of a very helpful letter, which was written on 17 April 1991 soon after the Committee's Report No. 5 of 1991, but which must have gone astray as it does not appear to have been received by the Committee. It covers all the points raised and which have now been corrected by ACT Determination No. 67. A further letter of 20 August 1991 also indicates that the Committee's involvement in any changes that may need to be made in the future will be acknowledged in the Explanatory Statement.

BILLS

(1) No Comment Offered

The Committee has examined the following Bills and offers no comment:

Adoption of Children (Amendment) Bill 1991

This Bill changes the name of the Director of Welfare to the Director of Family Services consequent upon changes made by the Children's Services (Amendment) Act 1991.

Children's Services (Amendment) Bill 1991

This Bill makes a number of changes to the operation of the principal Act including: the making of a care order to prevent the return of a child to an "at risk" situation, ensuring that parents are told as soon as possible if a child has entered a place of safety, providing for the appointment of an official visitor and providing for the reciprocal transfer of young offenders from one jurisdiction to another.

Community Advocate Bill 1991

This Bill establishes the statutory office of Community Advocate, whose duty it is to represent, and protect the interests of, persons who have legal, mental or intellectual disabilities.

Crimes (Amendment) Bill 1991

This Bill requires an interpreter to be provided to a person in police custody if a police officer has reasonable grounds for believing that the person has an insufficient grasp of the English language to understand the questions being asked by the police officer. An interpreter need not be provided where the questioning is in relation to an offence under the Motor Traffic (Alcohol and Drugs) Act 1977. There are also minor relocation, renumbering and heading changes.

Crimes (Offences against the Government) (Amendment) Bill 1991

This Bill provides for a rebuttable presumption of ownership in the Australian Capital Territory of property in the possession, custody or control of the Territory.

Crown Suits (Amendment) Bill 1991

This Bill makes it clear that an Act does not apply to the Territory unless the Act specifically states that to be the case.

Electricity and Water (Amendment) Bill (No. 2) 1991

This Bill permits the A.C.T. Electricity and Water Authority to set the basic water allowance, but subject to its disallowance by the Minister.

Guardianship and Management of Property Bill 1991

This Bill provides a system for the appointment of a guardian or manager for a person who is unable to make decisions because of intellectual, physical, mental or psychological incapacity.

Guardianship and Management of Property (Consequential Provisions) Bill 1991

This Bill makes amendments to the Lunacy Act 1898, the Powers of Attorney Act 1956 and the Transplantation and Anatomy

Act 1978 consequent upon the passing of the Guardianship and Management of Property Act 1991.

Liquor (Amendment) Bill 1991

This Bill makes it an offence to consume liquor within 200 metres of a bus interchange or stopping place, or a shop or licensed premises (unless using facilities provided by the proprietor or licensee or in pursuance of a permit) or a public place declared by regulations.

Magistrates Court (Amendment) Bill (No. 2) 1991

This Bill provides that, if the Court is satisfied that a defendant has an insufficient grasp of the English language to understand or participate in the proceedings, or is unable to hear or speak, those proceedings must not continue unless an interpreter is present to assist the defendant.

Rates and Land Tax (Amendment) Bill (No. 3) 1991

This Bill extends liability to pay land tax to residential land other than land used as the principal residence of the owner.

Royal Canberra Hospital Bill 1991

This Bill requires the Royal Canberra Hospital to be operated by the Australian Capital Territory Community and Health Service.

Self-Government (Consequential Amendments) Bill 1991

This Bill makes a considerable number of tidying up amendments to legislation as a result of the transition to self-government

Sewerage Rates (Amendment) Bill 1991

This Bill provides that the A. C. T. Electricity and Water Authority's determination of sewerage rates charges applies to the rating year specified in the determination and automatically continues in force for subsequent years unless changes are made by a further determination.

Stock Diseases (Amendment) Bill 1991

This Bill provides for a system of tagging of stock so that diseased stock can be traced back to their origin.

Trading Hours (Amendment) Bill 1991

This Bill extends trading hours for shops from noon on Saturday until 5 p.m.

Water Rates (Amendment) Bill 1991

This Bill amends the principal Act to remove the reference to an allowance of 455 kilolitres and replaces it with the basic water allowance as fixed by ACTEW and provides that a determination of water rates charges may be made before the financial year in which they are to apply and permits such determinations to carry on from year to year until changed.

Children's Services (Amendment) Bill (No. 2) 1991

This Bill amends the principal Act to change the name of the Youth Advocate to Community Advocate on the commencement of the Community Advocate Act 1991.

(2) Comment offered

National Crime Authority (Territory Provisions) Bill 1991

This Bill will enable the Territory to take part in the National Crime Authority Intergovernmental Committee and enable the N. C. A. to investigate crime in the A. C. T.

(a) Two possible errors.

There are two possible small matters in the draft that could be checked.

First, in clause 3(1) (on page 2) the definition of "special function" refers to "subsection 5(4)". This may be correct, perhaps the reference should be to "subsection 5(5)".

Secondly, in clause 21(2)(c)(ii) there is a reference to "subsection 21(9)". There is no subsection 21(9) in the draft, so this appears to be wrong. Perhaps the reference should be to "subsection 20(9)".

Trade Measurement Bill 1991, Trade Measurement (Administration) Bill 1991 and Weights and Measures (Amendment) Bill 1991

The Trade Measurement Bill 1991 regulates the measurement of trading goods and provides for the inspection of measuring instruments, the licensing of people servicing measuring instruments and for labelling requirements for pre-packaged goods.

The Trade Measurement (Administration) Bill 1991 makes detailed provision for the administration of the proposed Trade Measurement Act 1991 and its regulations.

The Weights and Measures (Amendment) Bill 1991 amends the principal Act by removing many general provisions and restricting the Act to one regulating the sale of bread.

The Committee makes two sets of comments on this package of Bills.

(b) A Couple of Small Points

There are two small comments on the amendments to be made to s. 22 of the Weights and Measures Act 1929 by clause 11 of the Weights and Measures (Amendment) Bill 1991.

First, clause 11(b) removes "article" throughout the section and substitutes "bread". In the first line of s. 22(1) the word "an" should also be removed to prevent the amended section reading "an bread".

Secondly, clause 11(d) and (e) very properly remove sexist language from s. 22(2)(b) and (d). Perhaps a check should be made to see if "he" appearing in the first line of both s. 22(2)(a) and (b) has already been amended to "he or she".

(c) Favourable Responses to the Committee's Concerns

As the Attorney-General, Mr Connolly, said in his Presentation Speech for the Trade Measurement Bill 1991:

"the Bill was originally presented to the Assembly in December 1990 by the former Attorney-General, Bernard Collaery."

In its Report No.1 of 1991 the Committee made extensive technical scrutiny type comments on the Bill some of which were approving and some of which were critical. Generous responses to the Committee's concerns dated 15 February 1991 and 16 April 1991 were received from the previous Attorney-General. These indicated that the Committee's concerns would be addressed in the Trade Measurement (Administration) Bill when it was presented.

It is very pleasing to note that the Committee's concerns have been addressed in the Trade Measurement (Administration) Bill 1991. Clauses 8 (providing for certificates of identity with a photograph), 9 (providing for proper evidence of consent to entry of premises by an inspector), 15 (providing for the issue of search warrants by a magistrate with appropriate protections built in) and 16 (putting in place provisions for access to, and copying of, seized records that might be necessary, for instance, for the continued carrying on of a business) all fulfil appropriately the undertakings given to the Committee by the previous Attorney-General.

In addition, the fact that the Trade Measurement Bill 1991 and the Trade Measurement (Administration) Bill 1991 have been introduced as a package (to which the Weights and Measures (Amendment) Bill 1991 has been appropriately added) fulfils the final promise made by the previous Attorney-General.

As the Explanatory Statement says:

"The Bill gives effect to an undertaking to the Legislative Assembly's Standing Committee on Scrutiny of Bills and Subordinate Legislation."

(d) General Comment on Fulfilment of Undertakings

The Committee notes that both the amendments made in the Trade Measurement package and those made to the Housing Assistance Act 1987 have been made in fulfilment of undertakings made to the Committee.

It is very gratifying for the Committee to see that the best traditions of non-partisan co-operation with the Committee on these non-policy matters of technical scrutiny involving aspects concerned with the protection of rights are being carried on in the Australian Capital Territory Legislative Assembly. Just as the present Committee's progenitors, the Senate's Standing Committee on Regulations and Ordinances and its Standing Committee for the Scrutiny of Bills, have been accustomed to undertakings involving technical scrutiny matters being honoured unquestioningly following changes of Ministers or Governments, so too, the same has happened in the present cases with the change of Attorney-General from Mr Collaery to Mr Connolly.

ASSOCIATIONS INCORPORATION BILL 1991 - GOVERNMENT RESPONSE

The Committee reported on the abovementioned Bill in Report No 14 of 1991, which was presented out of session on 27 August 1991. The Committee has since received a response, dated 10 September 1991, which is attached.

The Committee thanks the Attorney-General for his response. The Committee is grateful that steps have been taken to rectify the inconsistencies identified in sub clause 121(1).

The Committee notes the Attorney-General's assurance that in relation to the strict liability offence created by sub clause 64(4) that "it is extremely unlikely that a prosecution would ever be commenced against a person under the circumstances described in the committees Report, as it would be contrary to the policy of the Director of Public Prosecutions to do so."

Nevertheless, the Committee notes that the strict liability offence would remain and the protection offered would rely on the exercise of the discretion of a statutory officer.

A handwritten signature in black ink, appearing to read 'Ellnor Grassby', with a long horizontal flourish extending to the right.

Ellnor Grassby
Presiding Member

17 September 1991



A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

ATTORNEY GENERAL

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Phone 275 8853

Mrs Ellnor Grassby MLA
Presiding Member
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Dear Mrs Grassby

I refer to the comments of the Standing Committee on Scrutiny of Bills and Subordinate Legislation in Report No 14 of 1991 on the Associations Incorporation Bill 1991 which I introduced into the Assembly on 15 August 1991.

The Committee comments that there is an inconsistency in sub-clause 121(1) in that paragraph (a) talks about service by prepaid post while paragraph (c) refers to service by post. I am advised that the term 'prepaid post' is an older term and that contemporary drafting style uses the term 'post' instead as there is no difference between the meaning of the two terms.

I am further advised that Parliamentary Counsel's Office is providing advice as to whether the Clerk of the Assembly can correct the inconsistency by removing the word 'prepaid' from paragraph 121(1)(a) prior to sending the Bill for printing in the Gazette. The comma can certainly be added to sub-clause 64(3) in that way.

The offence created by sub-clause 64(4) supports the policy that all incorporated associations should at all times have a public officer. That policy is extremely important to the tightening of regulation of incorporated associations which is central to the proposed reform of the law in this area. The public officer provides a point of contact between the association and the Registrar.

I am advised that it is extremely unlikely that a prosecution would ever be commenced against a person under the sort of circumstances described in the Committee's Report as it would be contrary to the policy of the Director of Public Prosecutions to do so.

It would, however, be difficult to enforce the requirement that every incorporated association maintain a public officer without a provision similar to that in clause 64.

For these reasons I am convinced that the creation of a strict liability offence is necessary in this case and I am confident that it will not, in practice, operate to cause injustice.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Terry Connolly', with a stylized, cursive script.

Terry Connolly

10 SEP 1991